

**BUSINESS, TRANSPORTATION AND HOUSING AGENCY
BOARD OF PILOT COMMISSIONERS FOR THE BAYS
OF SAN FRANCISCO, SAN PABLO, AND SUISUN**

NOTICE OF PROPOSED RULEMAKING

May 14, 2010

Notice is hereby given that the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

1. Title 7. Harbors and Navigation, Division 2. State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun. Article 3. Officers, Committees, Employees. New Section 211.5. Commission Investigator Minimum Standards
2. Title 7. Harbors and Navigation, Division 2, State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun. Article 6. Government of Pilots, Inland Pilots and Trainees. New subsection 219(z), relating to Portable Pilot Units.

No public hearing is scheduled; however, any interested person or his or her duly authorized representative may request a public hearing no later than fifteen (15) days prior to the close of the public comment period.

Descriptions of the proposed changes are as follows:

1. Title 7. Harbors and Navigation, Division 2. State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun. Article 3. Officers, Committees, Employees. New Section 211.5. Commission Investigator Minimum Standards

The Board proposes to adopt new section 211.5 in Title 7 of the California Code of Regulations in order to implement, interpret and make specific Harbors and Navigation Code section 1156 relating to minimum standards for a commission investigator.

Authority and Reference

The proposed regulation has been adopted under the authority of Harbors and Navigation Code section 1154 and in order to implement, interpret, and make specific Harbors and Navigation Code section 1156.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board proposes to adopt new section 211.5. The proposed regulation will establish minimum standards for a commission investigator. Commission investigators are used by the Board to investigate and report on misconduct or navigational incidents involving a vessel piloted by a pilot or inland pilot.

Section 211.5 establishes minimum qualifications for an applicant for a Commission Investigator with the Board. This section provides that the applicant shall meet at least two of the six minimum requirements. The applicant is required to (1) possess or have possessed a United States Coast Guard license as Master of Ocean, Near Coastal or Inland vessels of any gross tons and shall have served at least two years as Master aboard vessels, (2) possess or have possessed a United States Coast Guard license as Chief Engineer, unlimited horsepower and shall have served at least two years as Chief Engineer aboard vessels, (3) have an education equivalent to a four year degree from a maritime academy, (4) possess or have possessed a license or endorsement as first class pilot to serve as pilot from sea to the Golden Gate Bridge or any route or subroute on waters east of the Golden Gate Bridge issued by the U.S. Coast Guard pursuant to 46 CFR Section 10.701 and Officer in Charge, Marine Inspection San Francisco Bay Instruction 16271 or successor thereto, (5) three years experience in shipboard duties as chief mate or chief engineer, and two years as a marine superintendent, port engineer, or equivalent and/or (6) three years experience as a senior U.S. Coast Guard investigative officer (Captain or Commander).

This section shall also provide for demonstration of experience or training in marine investigations by requiring either two years experience in either marine investigations or shipboard experience that includes marine investigations, or thirty or more hours of training in marine accident or incident investigative, from a marine investigative training program.

All applicants shall be required to possess a Transportation Worker Identification Credential (TWIC) issued by the Department of Homeland Security as a condition of employment or contract.

COST ESTIMATES OF PROPOSED ACTION

The Board has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on representative person or businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations will not directly affect small business. This proposal will provide job opportunities to individual persons.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESS

The adoption of these regulations will not facilitate the creation or elimination of jobs within California. The adoption of these regulations will not effect the creation or elimination of businesses within California or the expansion of businesses currently doing business within California.

REASONABLE ALTERNATIVES CONSIDERED

The Board has determined that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. This proposed regulation will implement specific statute requirements.

2. Title 7. Harbors and Navigation, Division 2. State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun. Article 6, Government of Pilots, Inland Pilots and Trainees. New subsection 219(z), relating to Portable Pilot Units.

The Board proposes to adopt new subsection 219(z) in Title 7 of the California Code of Regulations in order to implement, interpret and make specific Harbors and Navigation Code 1171.5(b) relating to Portable Pilot Units and use by pilots and inland pilots.

Authority and Reference

The proposed regulation has been adopted under the authority of Harbors and Navigation Code section 1154 and in order to implement, interpret, and make specific Harbors and Navigation Code section 1171.5(b).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board proposes to adopt new subsection 219(z). The proposed regulation will require pilots and inland pilots in the Bays of San Francisco, San Pablo, Suisun and Monterey to carry Portable Pilot Units, which are portable computers, aboard the vessels that they are piloting. This section will also require the pilots be trained in the use of the computer. A definition of Portable Pilot Unit is also added to section 202.

Section 219(z) will require pilots and inland pilots to carry a Portable Pilot Unit while piloting a vessel. This section also requires that the Portable Pilot Unit have navigational software installed and that the pilots be trained to use the system. This section also provides that the pilot does not need to carry the Portable Pilot Unit aboard a vessel if a safety hazard is present. The pilot or inland pilot that decides not to carry the Portable Pilot Unit aboard a vessel because of a safety hazard will be required to notify the Port Agent or Executive Director. This section also provides that the use of the unit on a vessel is at the discretion of the pilot and that it will not be construed as the fault of the pilot if they choose not to use the Portable Pilot Unit.

This regulation will affect the pilots and inland pilots in the Monterey and San Francisco Bays. They will be required to purchase a computer with the applicable software and hardware for use in their daily jobs. The costs of the equipment may be reimbursable.

Section 202(q) will define the Portable Pilot Unit as a computer brought on board a vessel by a pilot to use as a support tool for navigating the vessel in confined waters. The definition section is also amended for clarity. The definition of Investigator is deleted because a definition of Commission Investigator was recently added to the statute.

COST ESTIMATES OF PROPOSED ACTION

The Board has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on representative person or businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations will not directly effect small business. This proposal will only affect the pilots and inland pilots in the Bays of San Francisco, San Pablo, Suisun and Monterey.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESS

The adoption of these regulations will not facilitate the creation or elimination of jobs within California. The adoption of these regulations will not effect the creation or elimination of businesses within California or the expansion of businesses currently doing business within California.

REASONABLE ALTERNATIVES CONSIDERED

The Board has determined that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. This proposed regulation will implement specific statute requirements.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Board. Written comments will be accepted by the Board until 5:00 p.m. on June 28, 2010. Submit comments to:

Terri Toohey
Business, Transportation and Housing Agency
980 Ninth Street, Suite 2450
Sacramento, CA 95814
Terri.toohey@bth.ca.gov

Contact Person

Inquiries concerning the proposed action may be directed to:

Name: Terri Toohey
Email: terri.toohey@bth.ca.gov
Phone: 916-323-5400

The backup contact person for these inquiries is:

Name: Gabor Morocz
Email: gabor.morocz@bth.ca.gov
Phone: 916-323-5400

Questions on the substance of the proposed regulations may be directed to:

Name: Gabor Morocz
Email: gabor.morocz@bth.ca.gov

Availability Of Changed Or Modified Text

After the close of the forty-five (45) day public comment period, the Board may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the Board regarding this proposal, the Board may determine that changes to the proposed regulation are appropriate. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. The Board will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held), and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified

regulations to the attention of Terri Toohey at the above email address. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Availability Of Initial Statement Of Reasons, Rulemaking File And Express Terms Of The Proposed Regulations

The Board has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Business, Transportation and Housing Agency, 980 Ninth Street, Suite 2450, California during normal business working hours (9 am- 5 pm). Please contact Terri Toohey at the above email address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Board Contact Person designated in this Notice.

Availability Of Final Statement Of Reasons

The Board is required to prepare a Final Statement of Reasons. Once the Board has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Board Contact Person identified in this Notice.

Board Internet Website

The Board maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: www.pilotcommission.org.